IN RE JOSEPH LINUS

HIGH COURT, SINGAPORE
WEE CHONG JIN CJ
CHAN SEK KEONG J
FA CHUA J
[ORIGINATING SUMMONS NO. 728 OF 1988]
31 AUGUST 1990

LEGAL PROFESSION: *Disciplinary proceedings - Charge of dishonestly withholding fees - Alleged misconduct committed in Brunei - Whether disciplinary committee had jurisdiction to hear and determine the charge - Effect of findings and determination of committee - Powers of committee - Whether committee had erred in law in deciding that it had no power to decide the issue of its own jurisdiction - Sections 80(2) and 90 Legal Profession Act [Sing].*

This was an application by the Law Society under s. 95(6) of the Legal Profession Act (the Act) for an order absolute against Joseph Linus (JL) an advocate and solicitor of the Supreme Court. JL was also at all material times an advocate and solicitor of the High Court of Brunei. JL was alleged to have dishonestly withheld fees from the firm of Hilborne Hawkin & Co., his employers and therefore was alleged to have been guilty of grossly improper conduct as an advocate and solicitor within the meaning of s. 80(2)(b) of the Legal Profession Act. The committee then had made its determinations under s. 90(1) of the Act.

Prior to the actual date of the hearing, JL had apprised the committee, by affidavit, of his intention to argue that he was not subject to disciplinary proceedings under the act as his alleged misconduct took place in Brunei.

The committee deferred the determination of this objection and proceeded to hear the evidence, wherein it concluded that although JL was not guilty, there was cause of sufficient gravity for disciplinary action under s. 80 of the Act. Having made that determination, the committee then proceeded to consider the submission of Counsel for JL on jurisdiction.

Held:

[1] When a party to a proceeding before an inferior tribunal like the Disciplinary Committee challenges the jurisdiction of that tribunal to hear the matter before it, the tribunal must decide whether it has jurisdiction or not; without jurisdiction, it has no power to proceed further.

[2] The committee erred when it concluded that it was not competent to entertain submission of Counsel on the question of jurisdiction as firstly it had failed to understand the nature of the preliminary objection and secondly as the committee misconstrued the extent of its duties as an investigative body.

[3] In the present case, there was in reality no issue going to the root of the said proceedings in the sense that the committee had no authority to hear the complaint.

[4] The complaint against the solicitor could and should have been dismissed as the charge as only in reference to his conduct as an employee, in the discharge of his professional duty as a member of the firm of Hilborne Hawkin & Co., and not as a Singapore solicitor.

[5] As the committee erred in law in deciding firstly that it was not competent to decide the issue of its jurisdiction and secondly that on the charge or the facts there was cause of sufficient gravity for disciplinary action against JL, the application for an order absolute was dismissed with no order as to costs.

[Law Society's application dismissed.]

Cases referred to:
R v. Fulham, Hammersmith & Kensington Rent Tribunal [1951] 2 KB 1
Federated Engine-Drivers and Firemen's Association of Australia v. Broken Hill Proprietary Co. Ltd. [1911] 12 CLR 398
Anisminic v. Foreign Compensation Commission [1969] 2 AC 147
Oscroft v. Benabo [1967] 2 All ER 548

Legislation referred to:
Legal Profession Act (Cap 161 1985 Edn.) [Sing], ss. 80, (2)(b), 86, 90(1)(c), 95(6)

Other source referred to:
Hals Laws of, England para. 55

For the law society - Kan Ting Chiu

JUDGMENT

Wee Chong Jin CJ, Chan Sek Keong J, FA Chua J:

This is an application under s. 95(6) of the Legal Profession Act Cap. 161 1985 Edn. ("the Act"), for an order absolute against Joseph Linus ("JL"), an advocate and solicitor of the Supreme Court. JL was also at all material times an advocate and solicitor of the High Court of Brunei. We shall in this judgment use the terms "Singapore solicitor" and "Brunei solicitor" to describe respectively an advocate and solicitor of each of the said Courts.

JL was "charged" before the disciplinary committee ("the committee") on the following "charge":

> You, Joseph Linus are charged that you in or about the month of September 1986 at Bandar Seri Begawan while employed as a limited partner in the firm of Hilborne Hawkin & Company Advocates and Solicitors, received payment of professional fees of B$1,000 from Yusof Holdings Berhad for services rendered by you in the course of such employment, which fees you dishonestly withheld from Hilborne Hawkin & Company in breach of the terms of your employment and you have thereby been guilty of grossly improper conduct as an advocate and solicitor within the meaning of s. 80(2)(b) of the Legal Profession Act (Chapter 161).

JL denied the charge. His defence was that the bill in question was rendered and sent on the direction of the sole proprietor of the firm which employed him, one Vinod Kumar. Prior to the actual date of hearing, JL had apprised the committee by affidavit of his intention to argue that he was not subject to disciplinary proceedings under the act as his alleged misconduct took place in Brunei. At the commencement of the hearing, the chairman was fully aware of this preliminary objection as he requested full submissions on the issue. However, submissions on and the determination of this objection were deferred and the committee proceeded to hear the evidence. At the conclusion of the hearing which lasted 3 days during which 4 witnesses testified on behalf of the Law Society and JL gave evidence on his own behalf, the committee adjourned to write its report. In the report, the committee made its findings and determination in the following order. Firstly, it found as follows:

Findings

> The respondent admitted in his evidence that it was during office hours that he advised the directors of Barangan Land on the agreement he was requested to vet; that it was redrafted or revised by him in the office of Hilborne Hawkin & Co., during office hours; that the revised agreement was typed by a secretary employed by Hilborne Hawkin & Co., and that it was printed on a word processor of Hilborne Hawkin & Co., during office hours. On this evidence we find that the work done and the services provided by the respondent in respect of the said agreement were on behalf of Hilborne Hawkin & Co., and it could not, by any stretch of the imagination, be considered work done outside office hours and on his own personal account.

In any case, being employed full time by Hilborne Hawkin & Co., there was no question of his being at liberty to do work on his own account, even after office hours.

Loyalty to the firm required that any professional work offered had to be accepted for and on behalf of Hilborne Hawkin & Co.

The respondent admitted sending a bill for RM2,250 for the services rendered in respect of the said agreement and also admitted that he accepted the sum of RM1,000 in full satisfaction of the said bill.

The respondent also admitted that he had not paid over to Hilborne Hawkin & Co., this sum of RM1,000 received by him as a fee for work done by him in respect of the said agreement.

We accept Awang's evidence that right at the beginning of this episode it was the respondent's suggestion that he would carry out the work after office hours and for his own account and that the matter should not be disclosed to Mr. Vinod Kumar.

We do not accept the respondent's evidence that the said bill of RM2,250 was sent on the direction and with the consent of Mr. Vinod Kumar, the sole proprietor of Hilborne Hawkin & Co. We accept the evidence of Vinod Kumar that he never directed or authorised the respondent to send to Barangan Land the bill of RM2,250. We accept his evidence that he did not know anything about this whole matter until Awang came to see him with the said agreement; that he criticised the drafting of the agreement as very poor shoddy work; and that thereupon Awang told him that it was revised and redrafted by the respondent who had been paid RM1,000 for that service. We also accept his evidence that he discovered this after the respondent had left Hilborne Hawkin & Co; that he discovered further that the fee of RM1,000 collected by the respondent had not been paid over to Hilborne Hawkin & Co., and that upon this discovery he was so incensed that he reported the matter to the Attorney-General of Brunei requesting disciplinary action to be taken against the respondent.

We reject the respondent's defence that he was directed by Vinod Kumar to send his personal bill and keep the fee earned in respect of the work done in revising or redrafting the agreement in question.

Determination

The committee finds that it has been proved beyond a reasonable doubt that the respondent, while employed as a limited partner by Hilborne Hawkin & Co., in the State of Brunei, in the course of his professional work done on behalf of the said firm, collected a fee of B$1,000 from a client and failed to pay it over to Hilborne Hawkin & Co. This conduct of the respondent in dishonestly withholding the said sum of B$1,000 from his employers, Hilborne Hawkin & Co., in the opinion of the committee, was clearly fraudulent and therefore grossly improper conduct in the discharge of his professional duty within the meaning of s. 80(2)(b) of the Legal Profession Act (Cap. 161). Accordingly, the committee finds the respondent guilty on the charge formulated against him by The Law Society. The committee determines under s. 90(1)(c) of the Act that cause of sufficient gravity for disciplinary action exists under s. 80 of the Act.

Having made that determination, the committee then proceeded to consider the submission of Counsel for JL on jurisdiction in these words:

Counsel submitted that this disciplinary committee had no jurisdiction to deal with the complaint of The Law Society because the misconduct, if any, was committed in the State of Brunei which is a foreign country; that the Legal Profession Act (Cap. 161) applies only to misconduct committed in Singapore; that it has no extra-territorial application; and that "there is a presumption of [sic] territorial jurisdiction unless express provisions otherwise are made in the statute.

The reasons that were given are as follows:

> A disciplinary committee is not a Court of law. It has no inherent powers. It is a creature of statute and its powers and duties are spelled out in the statute. It is empowered and required by s. 86 of the Legal Profession Act (Cap. 161) to hear and investigate the allegations of misconduct set out in the statement of case of The Law Society and after doing so it has to record its findings in relation to the facts of the case and according to those facts it has to make one of the following three determinations as required by s. 90(1) of the Act:
>
> (a) that no cause of sufficient gravity for disciplinary action exists under s. 80;
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> (b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or
>
> (c) that cause of sufficient gravity for disciplinary action exists under that section.
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> A disciplinary committee has no other powers. Anything else it does will be *ultra vires* the powers conferred upon it by the Legal Profession Act (Cap. 161).
>
> A disciplinary committee is therefore incompetent to deal with submissions relating to want of jurisdiction or non-compliance with the provisions of the Legal Professions Act. These are matters which, in the opinion of this committee, must be raised before the High Court.

Having decided that it had no power to determine the question of jurisdiction, the committee then proceeded, "for convenience and for the sake of completeness" to deal with the issue of jurisdiction and came to the following conclusion:

> In our view, when a solicitor practising in Singapore is also practising in a foreign country, and commits there some act in the discharge of his professional duty, which is alleged to constitute professional misconduct, it is clearly a matter for investigation by and in accordance with the disciplinary process of that country.
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> ...
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> ...
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> In the present case the alleged misconduct having taken place in Brunei, a foreign state, and as it does not fall within para. (a) or (k) of s. 80(2) of the Act, it follows that in the opinion of this committee The Law Society of Singapore had no jurisdiction to commence disciplinary proceedings against the respondent.

In the result, the committee, whilst of the opinion that JL was not guilty of misconduct that would subject him to disciplinary action under s. 80(2)(b) of the Act, nevertheless found that cause of sufficient gravity for disciplinary action existed under that section. This result came about as a result of the committee deciding that it had no power to give effect to its own opinion on the law.

Before us, Counsel for the Law Society made the submission that the committee erred in law in deciding that it had no power to decide the issue of its own jurisdiction. Counsel referred us to *1 Hals Laws of England,* para. 55 which reads:

> Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.

and *R v. Fulham, Hammersmith & Kensington Rent Tribunal* [1951] 2 KB 1, at p. 10 where Lord Devlin said:

> When, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to their jurisdiction, the tribunal have to make up their minds whether they will act or not, and for that purpose to arrive at some decision on whether they have jurisdiction or not.

Counsel also made a further submission that the committee erred in law in holding the opinion that the misconduct of JL did not fall within the terms of s. 80(2)(b) of the Act and that it did as it went to his character and fitness to practise as an advocate and solicitor in Singapore.

JL did not appear personally but filed an affidavit to show cause. Counsel for the Law Society did not object to the manner in which JL showed cause but he objected to those parts of the affidavit which he submitted contained irrelevant, inadmissible and objectionable assertions. In his affidavit, JL again raised the issue of jurisdiction and a further objection that the *ex parte* order to show cause was bad on the ground, *inter alia*, that as the committee had requested the High Court for a ruling on the issue on jurisdiction, the Law Society should have proceeded to obtain such a ruling before applying for an order to show cause.

We accept as entirely correct the submission of Counsel for the Law Society that when a party to a proceeding before an inferior tribunal like the disciplinary committee challenges the jurisdiction of that tribunal to hear the matter before it, the tribunal must decide whether it has jurisdiction or not. The reason the committee must decide any objection to the existence of its own jurisdiction to hear the matter is obvious. Without jurisdiction, it has no power to proceed further and therefore to proceed on the assumption that it has jurisdiction may be to proceed in void. Furthermore, as Griffiths CJ said in *Federated Engine-Drivers and Firemen's Association of Australia v. Broken Hill Proprietary Co. Ltd.* [1911] 12 CLR 398 at p. 415, "... the first duty of every judicial officer is to satisfy himself that he has jurisdiction, if only to avoid putting the parties to unnecessary risk and expense".

When a challenge is made to its jurisdiction, the tribunal should exercise care not to allow itself to be misled or confused by an objection which is expressed in general terms. The reason is that the word "jurisdiction" is a slippery word which a tribunal can easily fail to grasp. It is used in various senses and with various shades of meaning, depending on its context. In *Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147 at p. 171, Lord Reid pointed out that "it is better not to use the term except in its narrow and original sense of the tribunal not being entitled to enter on the inquiry in question". In *Oscroft v. Benabo* [1967] 2 All ER 548, Diplock LJ (at p. 557) defined the term as follows:

> A Court may lack "jurisdiction" to hear and determine a particular action or application because (i) of the composition of the Court (for example, the bias of the Judge), or (ii) the subject matter of the proceedings (for example, title to foreign land), or (iii) the parties to the proceedings (for example, diplomatic immunity); or, although having jurisdiction to hear and determine the proceedings, it may lack jurisdiction to make the kind of order made; ...

In the present, the committee paraphrased the issue of jurisdiction in these terms:

> the disciplinary committee had no jurisdiction to deal with the complaint of the Law Society because the misconduct, if any, was committed in the State of Brunei, which is a foreign country; that the Legal Profession Act applies only to misconduct in Singapore; that it has no extra-territorial jurisdiction; ...

What is, in this passage, the nature of the jurisdiction that is contended to be lacking? The committee having stated the submission immediately went on to examine its powers and duties as a statutory body and concluded that it was not competent to entertain the submission of Counsel. In our view, the committee erred coming to this conclusion for two reason: (1) it

failed to understand the nature of objection (which failure was contributed, in our view, by Counsel's failure to clarify the nature of the objection), and (2) it misconstrued the extent of its duties as an investigative body.

As to the first reason, the nature of Counsel's objection was simply that the Act (or the provision under which JL was charged) did not apply to the alleged misconduct of JL. In other words, even if the misconduct were proved, it would not have subjected JL to disciplinary action by the Supreme Court under s. 80(1) of the Act, and accordingly, the committee had no "jurisdiction" to deal with the matter. In our view, this submission is directed not so much to the jurisdiction of the committee as to the exercise of common sense. The submission was that the committee's investigation was an exercise in futility. However, what Counsel for JL failed to impress on the committee was that his submission was based on the assumption that in law it would not subject JL to disciplinary action under s. 80(2)(b) and that he was not submitting that the committee had no power to determine whether the alleged misconduct of JL would subject him to disciplinary action.

As to the second reason, in deciding that it lacked competence to decide the issue, the committee was in substance deciding that it did not have the power to decide or not the alleged misconduct falls within the ambit of s. 80(2)(b). The committee took the view that only the High Court could decide the issue. (Strictly speaking, the reference to the High Court may not even be correct as it is the Supreme Court or a Judge thereof which has jurisdiction by virtue of s. 80(1) or three judges of the Supreme Court by virtue of s. 95(6) of the Act). This implies that the power of the committee is limited to an investigation to the existence of misconduct, which is a pure question of fact. Section 86 of the Act imposes on the committee, when appointed by the Chief Justice, a duty to hear and investigate any matter recommended for formal investigation by the inquiry committee. After hearing and investigating the matter, the committee is then under a duty to record its findings on the facts and on such facts one of three determinations as prescribed by s. 90(1), *viz*:

(a) that no cause of sufficient gravity for disciplinary action exists under s. 80;

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or

(c) that cause of sufficient gravity for disciplinary action exists under that section.

There are other duties which the committee has to perform depending on the determination it makes. These are all statutory duties and not powers. Without these duties, the committee would have no powers at all. The sum of these duties or powers constitute and delineate the jurisdiction or authority of the committee in relation to an advocate and solicitor of the Supreme Court of Singapore.

The disciplinary committee's determination under s. 90 of the Act is a duty it must discharge and not merely a power which it may exercise. The section requires the disciplinary committee to make a determination in terms of para. (a), (b) or (c) of that section. It cannot make a determination in terms of para. (c) (*viz.*, that cause of sufficient gravity for disciplinary action exists under s. 80) unless the misconduct complained of, as a matter of law, subjects the advocate and solicitor to disciplinary action under that section. No such cause can exist unless the liability to disciplinary action exists. In order to make that determination, the disciplinary committee, must also decide whether the alleged misconduct, if proved, falls within the ambit of s. 80. Its duty is not merely to investigate the existence of misconduct but misconduct of a kind that would subject JL to disciplinary action. It must therefore follow that not only is the disciplinary committee competent to decide that issue, it is under a

statutory duty to do so. In the present case, there was in reality no issue going to the root of the said proceedings in the sense that the committee had no authority to hear the complaint. If the committee had identified the correct nature of the "jurisdictional" point, it would have dealt with i, and, in accordance with its own opinion, dismissed the complaint **in limine.**

The committee has given its opinion on the types of misconduct which if committed by a Singapore solicitor practising in a foreign country would subject him to disciplinary action under the various provisions of the act. We do not propose to express our views on these matters and they must remain as an opinion of the disciplinary committee. However, in the case before us, we have to decide whether the complaint against JL comes within the ambit of the section under which it was laid, *viz.*, s. 80(2)(b) of the Act. It should be recalled that JL was a Singapore solicitor as well as a Brunei solicitor and the alleged misconduct was committed by him in Brunei. The committee's opinion that misconduct committed outside Singapore did not come within the act was expressed in terms which did not make a distinction between the capacities in which in JL was alleged to have misconducted himself. We think that such a distinction is vital as the first limb of s. 80(2)(b) makes the distinction. Under that limb, a Singapore solicitor is liable to disciplinary action if he "is guilty of fraudulent or grossly improper misconduct **in the discharge of his professional duty**". These words are intended to and can only refer to the discharge of his professional duty in his capacity **as an advocate and solicitor of the Supreme Court of Singapore** and not in some other capacity. In their context, no other construction is possible. It follows that the locus of the misconduct is irrelevant so long as it is committed by a Singapore solicitor in discharge of his duty as a Singapore solicitor. The corollary of this is that where a Singapore solicitor is also qualified to practise as a solicitor in some other country, then any misconduct by him in the discharge of his professional duty as a foreign solicitor does not fall within the first limb of s. 80(2)(b) **even if the misconduct is committed in Singapore.** However, it does not follow from this principle that the misconduct of such a solicitor does not subject him to disciplinary action under some other provision of the act.

As far as the charge against JL was concerned, it was that he had dishonestly withheld professional fees from his employers, a Brunei firm of advocates and solicitors, whilst in the employment of that firm and was thereby guilty of a grossly improper act as an advocate and solicitor within the meaning of s. 80(2)(b) of the Act. That, in our view, could only be a reference to his conduct as an employee of the firm, i.e., in the discharge of his professional duty as a member of that firm and not as Singapore solicitor. We would further observe that the charge did not include the vital words "in the discharge of his professional duty". If those words had been included in the charge, the self-contradiction in the charge would have become apparent. Accordingly, the complaint could and should have been dismissed on that ground.

We also express no opinion on whether if what JL had done was done in the discharge of his professional duty in his capacity as a Singapore solicitor that would have subject him to the second limb of s. 80(2)(b) which reads:

> guilty of such a breach of any usage or rule of conduct made by the council under the provisions of this Act as in the opinion of the Court amounts to improper conduct or practice as an advocate and solicitor.

That raises a true issue as to the extra-territorial jurisdiction of the Supreme Court to discipline a Singapore solicitor for misconduct committed outside Singapore. The issue arising from the charge did not. It was one of statutory construction.

For the above reasons, we find that the committee erred in law in deciding (1) that it was not competent to decide the issue of its jurisdiction and (2) that on the charge or the facts there was cause of sufficient gravity for disciplinary action against JL. The application for an order absolute is accordingly dismissed with no order as to costs.

Also found at [1990] 2 CLJ 870